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Court of Appeals
Division II
State of Washington
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NO. 56432-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Appellant,

v.

BROOKE L. HAGEN,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF
CLALLAM COUNTY, STATE OF WASHINGTON
Clallam County Superior Court No. 18-1-00130-6

REPLY

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
I. ARGUMENT	1
A. THE COURT HAD JURISDICTION OVER THE CRIMINAL CASE EVEN THOUGH RCW 69.50.4013(1) WAS LATER HELD TO BE UNCONSTITUTIONAL.	1
II. CONCLUSION	5
CERTIFICATE OF DELIVERY	7

TABLE OF AUTHORITIES

Washington Cases

<i>American Discount Corp. v. Shepherd</i> , 129 Wn. App. 345, 353 120 P.3d 96 (2005)	4
<i>Marriage of Little [Little v. Little]</i> , 96 Wn.2d 183, 197, 634 P.2d 498 (1981)	1
<i>State v. Anderson</i> , 83 Wn. App. 515, 518, 922 P.2d 163 (1996)	2
<i>State v. Blake</i> , 197 Wn.2d 170, 481 P.3d 521 (2021)	1
<i>State v. Bradshaw</i> , 152 Wn.2d 528, 98 P.3d 1190 (2004)	2
<i>State v. Cleppe</i> , 96 Wn.2d 373, 635 P.2d 435 (1981)	2
<i>State v. Humphrey</i> , 139 Wash.2d 53, 57, 983 P.2d 1118 (1999).....	4
<i>State v. Posey</i> , 174 Wn.2d 131, 139, 272 P.3d 840 (2012)	3

Federal Cases

<i>U.S. v. De Vaughn</i> , 694 F.3d 1141, 1153–54 (10th Cir. 2012).....	3
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Statutes

RCW 69.50.4013	2
RCW 9A.04.030(1)	2
RCW 9A.76.170	4

I. ARGUMENT

A. THE COURT HAD JURISDICTION OVER THE CRIMINAL CASE EVEN THOUGH RCW 69.50.4013(1) WAS LATER HELD TO BE UNCONSTITUTIONAL.

Hagen, citing to *Marriage of Little* [*Little v. Little*], 96 Wn.2d 183, 197, 634 P.2d 498 (1981), responds that the trial court did not have personal jurisdiction over Hagen for the bail jumping charge, as found by the trial court, presumably because the statute underlying the bail jumping charge was later declared void in

Marriage of Little, a divorce proceeding where jurisdiction and the authority of courts are prescribed by the applicable statute, has no application in this case. *Little* does not stand for a proposition that personal jurisdiction never existed to begin with when a statute underlying the cause is later declared void in *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021).

Hagen's criminal case was charged and brought to court just as any other in the State of Washington. There was a valid

statute (RCW 69.50.4013) underlying the criminal charges that had twice been held constitutional by the Washington Supreme Court in *State v. Bradshaw*, 152 Wn.2d 528, 98 P.3d 1190 (2004) and *State v. Cleppe*, 96 Wn.2d 373, 635 P.2d 435 (1981).

“[T]he superior court has subject-matter jurisdiction over defendants under the constitution as well as personal jurisdiction over criminals pursuant to RCW 9A.04.030(1)” *State v. Anderson*, 83 Wn. App. 515, 518, 922 P.2d 163 (1996) (citing Const. art. IV, § 6) (“Our state constitution grants original jurisdiction to the superior court “in all criminal cases amounting to felony, and in all cases of misdemeanor otherwise provided for by law.”).

Under RCW 9A.04.030(1), the following persons are liable to punishment: “(1) A person who commits in the state any crime, in whole or in part.”

Thus personal jurisdiction depends upon where the act was completed. Subject matter jurisdiction is about what act

was done, i.e., an act constituting a felony or misdemeanor. Therefore it is subject matter jurisdiction which is relevant because it asks the question of whether an act constituted a felony to begin with.

Regardless, in this case the trial court had complete jurisdiction. After Hagen's criminal matter was completed, the court did not lose jurisdiction retroactively because RCW 69.50.4013 was later declared unconstitutional in *State v. Blake*.

“[A] court's jurisdiction cannot hinge on the result it reaches.” *State v. Posey*, 174 Wn.2d 131, 139, 272 P.3d 840 (2012). “It is conceptually incoherent to suppose that a court's power to determine a case depends on its determination in the case.” *Id.*

“A claim that a criminal statute is unconstitutional does not implicate a court's subject matter jurisdiction.” *U.S. v. De Vaughn*, 694 F.3d 1141, 1153–54 (10th Cir. 2012) (quoting *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89, 118 S.Ct. 1003, 1010, 140 L.Ed.2d 210 (1998)).

“Furthermore, as the Supreme Court explained in *Williams*, a court has jurisdiction over a criminal case even when it or a higher court later determines the statute under which the defendant was prosecuted is unconstitutional.” *Id.* at 1154 (quoting *U.S. v. Williams*, 341 U.S. 58, 68–69, 71 S.Ct. 595, 601, 95 L.Ed. 747 (1951)).

Finally, Hagen cites to the amendment of RCW 9A.76.170 as a basis to uphold the courts abuse of discretion in dismissing the bail jumping charge. “Generally statutes are presumed to apply prospectively, unless there is some legislative indication to the contrary.” *State v. Humphrey*, 139 Wash.2d 53, 57, 983 P.2d 1118 (1999) (citing *Macumber v. Shafer*, 96 Wn.2d 568, 570, 637 P.2d 645 (1981)). “This presumption can be overcome . . . if the legislature intended retroactivity, if the amendment is curative, or if the amendment is remedial.” *American Discount Corp. v. Shepherd*, 129 Wn. App. 345, 353 120 P.3d 96 (2005) (citing *Barstad v. Stewart Title Guar. Co.*, 145 Wn.2d 528, 536–37, 39 P.3d 984 (2002)).

Here, the presumption of prospective application has not been overcome because Hagen cites to no authority or relevant argument that RCW 9A.76.170 as amended is retroactive in any way. This argument should be disregarded.

The weight of authority is clear on the point that the court's jurisdiction does not depend on the constitutional validity of the charges or the outcome of the case. Therefore, the trial court's decision to vacate the Bail Jumping conviction on the basis it did not have jurisdiction because RCW 69.50.4013 was later found to be unconstitutional was based upon an incorrect legal standard and was an abuse of discretion.

Therefore, this Court should reverse.

II. CONCLUSION

The trial court's reason for its decision vacating the Bail Jumping conviction was untenable because the court's jurisdiction or power to hear and determine a case was not impacted by the later determination that RCW 69.50.4013(1)

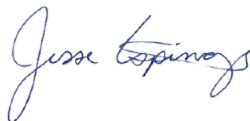
was unconstitutional. The trial court had the power to hear the case and with it, the power to compel Hagen to appear before it. This was sufficient to support a Bail Jumping charge.

Therefore, the trial court abused its discretion and this Court should reverse the order vacating the conviction for Bail Jumping and should reinstate appropriate legal financial obligations in the judgment and sentence.

This document contains 857 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 1st day of August, 2022.

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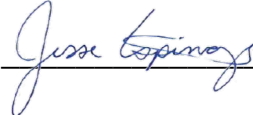
A handwritten signature in blue ink, appearing to read "Jesse Espinoza", with a stylized, cursive script.

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CERTIFICATE OF DELIVERY

Jesse Espinoza, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically to Suzanne Lee Elliott on August 1, 2022.

MARK B. NICHOLS, Prosecutor



Jesse Espinoza

CLALLAM COUNTY DEPUTY PROSECUTING ATTORNEY

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